

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

ADRIANNE SMITH, as an individual and  
on behalf of all others similarly situated,,

Plaintiff,

vs.

KRAFT FOODS, INC., a Virginia  
corporation,

Defendant.

CASE NO. 07cv1352-LAB (BLM)

**ORDER REJECTING LATE  
FILING FEE**

On August 1, 2007, Harold M. Hewell, Esq. filed a purported federal Class Action Fairness Act Complaint seeking injunctive relief, restitution, and damages from defendant Kraft Foods, Inc. alleging, *inter alia*, unfair business practices, false and misleading advertising, misrepresentation, breach of warranty, violations of the California Consumer Legal Remedies Act, and unjust enrichment associated with certain of Kraft's product labeling practices. Summons issued the same day. On August 22, 2007, the Financial Department of this court notified Mr. Hewell by letter that his personal check in the amount of \$350.00 tendered as the filing fee for the Complaint had been returned by the bank due to insufficient funds, instructed him the court would accept in future from him only cashier's checks or money orders, and requested he provide such payment directed to the Clerk of Court at the address provided in the letter. Dkt No. 3. As no further activity in the case appeared from the docket, the undersigned District Judge dismissed this case in its entirety, without prejudice, by Order entered October 17, 2007 on grounds no action had been technically commenced. Dkt No. 4.

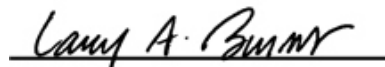
On October 29, 2007, counsel attempted to pay the filing fee. The Clerk's Office contacted chambers and was instructed not to accept the filing fee until counsel obtained

1 relief from the dismissal Order. Mr. Hewell called chambers to inquire about the options for  
2 paying the filing fee and was instructed either to seek relief from the termination Order or to  
3 refile the action as a new case. He indicated he would take the latter option as the most  
4 expedient course of action.

5 Notwithstanding the foregoing events, the docket reflects payment of the civil filing fee  
6 was accepted on October 29, 2007. Dkt No. 5. **IT IS HEREBY ORDERED** the Clerk of  
7 Court shall not reactivate this terminated action without the court's entering an Order  
8 relieving plaintiff from the dismissal. **IT IS FURTHER ORDERED** the Clerk of Court shall  
9 refund to counsel the filing fee portion of the funds accepted on October 29, 2007. **IT IS**  
10 **FURTHER ORDERED** plaintiff may either file a new action accompanied by the civil filing  
11 fee or seek leave of court for relief from the dismissal and for leave to belatedly pay the filing  
12 fee in this action.

13 **IT IS SO ORDERED.**

14 DATED: October 30, 2007

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16 **HONORABLE LARRY ALAN BURNS**  
17 United States District Judge  
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